IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

MACA.No. 390 of 2005(G)

OPMV.686/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THODUPUZHA
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APPELLANT/5TH RESPONDENT:

UNITED INDIA INSURANCE COMPANY LTD., PERUMBAVOOR, NOW REP. BY ITS ASSISTANT MANAGER, THIRD PARTY CLAIMS CELL, M.G.ROAD, KOCHI-16.

BY ADV. SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

RESPONDENTS:PETITIONERS AND RESPONDENTS 1 TO 4
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1. V.SREEDHARAN, S/O.VELAPADHAN, VACHAPPILLIL HOUSE, PUTHUPARIYARAM P.O., CHITTOOR, THODUPUZHA.

2. C.K.SANTHAKUMARI, W/O.SREEDHARAN, DO.DO.

3. A.K.SARASAKSHAN, S/O.KUTTAPPAN, ARACKAL HOUSE, POOCHAPRA KARA, VELLIYAMATTAM VILLAGE.

4. P.P.KARIM, S/O.FAKRUDEEN, PULIMOOTTIL HOUSE, POOCHAPRA KARA, VELLIYAMATTAM VILLAGE.

5. THE NEW INDIA ASSURANCE COMPANY LIMITED, PALAI.

6. BAHULEYAN, S/O.KELA, EDAPPATTU HOUSE, ARUVAPPARA KARA, KURUPPUMPADY VILLAGE.

BY ADV. SRI.N.K.KARNIS
SRI.SUMESH.S.KALARICKEL FOR R6
SRI.K.A.SEBASTIAN FOR R3 AND R4
SRI.P.A.BAHULEYAN
SRI.KKM.SHERIF FOR R5
SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 12/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

MACA 390/2005

ORDER IN I.A. NO. 739 OF 2005 IN MACA NO.390 OF 2005

DISMISSED

12/3/07

SD/-
P.R.RAMAN, JUDGE.

SD/-
ANTONY DOMINIC, JUDGE.

//TRUE COPY//

P.R.RAMAN & ANTONY DOMINIC, JJ.
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M.A.C.A NO. 390 OF 2005
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Dated this the 12th day of March, 2007

J U D G M E N T

Antony Dominic, J.

The appellant was the insurer of jeep bearing No.KLF 7900. An application for compensation was filed before the MACT, Thodupuzha by the parents of one deceased Biju. The allegation was that while the deceased was driving a motor bike bearing No.KL6 7010 with a pillion rider, an accident occurred on 30/3/96 in which the jeep bearing No.KLF 7900 came from the opposite side of the road in a rash and negligent manner and hit the motor bike. A a result of the accident, the riders of the motor bike fell down on the road and another jeep bearing registration No.KRO 5610, insured by the 5th respondent herein, ran over Biju, who was riding the motor cycle. It is said that Biju, who was involved in the accident succumbed to the injuries and this led to the filing of the petition.

2. The Motor Accidents Claims Tribunal held that the

accident occurred on account of the negligent driving of the jeeps involved in the accident and held that the Insurance Companies are liable to indemnify the respective owners of the offending vehicles involved in the accident.

3. The deceased who was below 25 years and a bachelor earning Rs.3,500/- per month towards his salary, the Tribunal adopted 15 as the multiplier and awarded Rs.2,70,000/- under the head of loss of estate. In addition, the Tribunal also awarded compensation towards transportation to hospital, funeral expenses, pain and suffering, loss of future assistance and companionship, loss of future prospects and loss of love and affection. Altogether, the Tribunal awarded Rs.2,98,000/- as compensation and directed that the amount will carry interest at the rate of 6%. In view of the finding of the Tribunal that the accident had occurred on account of the rash and negligent driving of both the jeeps, the Tribunal directed that the appellant and the 5th respondent shall pay the compensation amount in the ratio of 60:40. Aggrieved by the said award, the appellant, who was the 5th respondent before the Tribunal has come up in appeal.

4. The main submission made by the Counsel for the appellant was that the jeep bearing registration No. KLF 7900, of which the appellant is the insurer, was not involved in the accident and therefore the Tribunal's finding to the contrary is incorrect and the Tribunal ought not have fastened the liability for compensation on the appellant. The counsel also attempted to draw support to his contention by making reference to the charge sheet that was filed before the Criminal Court, which according to the counsel, made it clear that the vehicle in question was not involved in the accident. However, the Tribunal refused to give much credence to the charge sheet on account of the acceptable evidence which was available before the Tribunal indicating the involvement of both the jeeps. We note that in addition to PW1, the mother of the deceased, PWs 2 and 3 were examined before the Tribunal. PW2 was an independent witness to the accident, who testified before the Tribunal that the accident had occurred due to the rash and negligent driving of drivers of both the jeeps. PW3, the pillion rider of the motor bike, also has corroborated this evidence. In such circumstances, the Tribunal has rightly chosen

to rely upon the independent evidence available before it as against the charge sheet, the lone piece of evidence that was available to the Insurance Company to support its plea that it shall not be made liable for the compensation.

5. On an overall appreciation of the evidence available before the Tribunal, we are constrained to take the view that the Appellant Insurance Company did not succeed in placing acceptable evidence in support of its contention. We therefore do not find any error in the conclusion of the Motor Accidents Claims Tribunal.

6. However, we note that the Tribunal has apportioned the liability for compensation in the ratio of 60:40 between the appellant and the 5th respondent. Having found that both the jeeps were involved in the accident and were driven in an equally rash and negligent manner, we do not find any justifiable reason for an unequal apportionment of liability. In our view, the Tribunal ought to have made both the Insurance companies equally liable and on that basis, should have apportioned the liability in the ratio of 50:50. We accordingly modify the award and direct that

the appellant and the 5th respondent, the 3rd and 5th respondent before the Tribunal shall pay 50% each of the compensation as awarded by the Tribunal.

Subject to the above modification, the appeal will stand dismissed.

P.R.RAMAN, JUDGE.

ANTONY DOMINIC, JUDGE.

Rp